

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:12-35770 Mirage Bottling Group Inc

Chapter 7

#1.00 OTHER EXPENSES: EMPLOYMENT DEVELOPMENT DEPARTMENT

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 8.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

**United States Bankruptcy Court
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Chapter 7

#2.00 OTHER FEES: BUCHALTER NEMER

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 8.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

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#3.00 OTHER EXPENSES: FRANCHISE TAX BOARD

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 8.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

**United States Bankruptcy Court
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#4.00 OTHER EXPENSES: FR/CAL BOYLE STREET, LLC

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 8.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

**United States Bankruptcy Court
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Chapter 7

#5.00 FEES: US TRUSTEE

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 8.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

**United States Bankruptcy Court
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Chapter 7

#6.00 APPLICANT: SULMEYERKUPETZ, Attorney

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$9,927.64 (\$27,305.00 requested in the Application)

Expenses: \$312.68 (\$681.28 requested in the Application)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

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Chapter 7

#7.00 APPLICANT: LESNICK, PRINCE & PAPPAS, LLP, Attorney

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Having reviewed the fees and expenses of this applicant, the court approves the chapter 7 trustee's interim distribution to the applicant on a final basis.

Fees: \$52,440.09 (\$52,440.09 already distributed)

Expenses: \$0

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

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#8.00 APPLICANT: HOWARD M EHRENBURG, Trustee

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,331.49

Total Expenses: \$482.48

U.S. Bankruptcy Court Charges: \$3,373.39

U.S. Trustee's Fees: \$3,582.62

Other Fees (Buchalter Nemer): \$0

Other Expenses (Employment Development Department): \$0

Other Expenses (FR/CAL Boyle Street, LLC): \$42,326.04

Other Expenses (Franchise Tax Board): \$2,945.00 (\$2,945.00 already distributed)

Other Expenses (International Sureties, LTD): \$136.66 (\$136.66 already distributed)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

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10:00 AM

CONT... Mirage Bottling Group Inc

Chapter 7

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

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#9.00 OTHER EXPENSES: INTERNATIONAL SURETIES, LTD

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 8.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

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2:12-35770 Mirage Bottling Group Inc

Chapter 7

#9.10 APPLICANT: MENCHACA & COMPANY LLP

Hearing re [320] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$1,773.44 (\$3,864.00 requested in the Application)

Expenses: \$23.98 (\$52.25 requested in the Application)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Mirage Bottling Group Inc

Represented By
Phillip Myer
Michael E Plotkin
Jerome Bennett Friedman

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Asa S Hami
Christopher E Prince
Matthew A Lesnick

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:14-14304 Hector Guerrero

Chapter 7

Adv#: 2:14-01277 NuVision Federal Credit Union v. Guerrero

#10.00 HearingRE: [30] Motion to Enter Judgment pursuant to Default in Payment on Stipulation for Entry of Judgment

Docket 30

Tentative Ruling:

4/4/2017: For the reasons set forth below, GRANT Motion.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Enter Judgment Pursuant to Default in Payment of Stipulation for Entry of Judgment ("Motion") [Doc. No. 30]
- 2) No opposition on file

I. Facts and Summary of Pleadings

On May 1, 2014, NuVision Federal Credit Union ("Plaintiff") commenced a non-dischargeability action against Hector Guerrero ("Defendant"). Doc. No. 1. The action settled at a mediation conference conducted on December 16, 2014. Doc. No. 25. On January 5, 2015, the parties entered into a Stipulation for Entry of Judgment (the "Stipulation"). Doc. No. 23. The key terms of the Stipulation are as follows:

- 1) Plaintiff is entitled to a judgment (the "Stipulated Judgment") against Defendant in the amount of \$15,576.62.
- 2) Plaintiff will forbear seeking entry of the Stipulated Judgment, and will accept the reduced sum of \$6,000.00 as payment in full, provided that Defendant makes monthly payments in the amount of \$100.00.
- 3) Should Defendant fail to make a monthly payment, Plaintiff will send Defendant a cure demand. If Defendant does not cure the arrearage within ten days, Plaintiff will apply to the Court for entry of the Stipulated Judgment.

On January 8, 2015, the Court entered an order approving the Stipulation and dismissing the action, but retaining jurisdiction to enforce the Stipulation should Defendant default. Doc. No. 26.

Plaintiff now moves for entry of the Stipulated Judgment, based on Defendant's failure to make any payments subsequent to May 3, 2016. Plaintiff sent Defendant a

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CONT... Hector Guerrero

Chapter 7

demand letter on October 19, 2016, but Defendant has failed to cure the arrearages.
Defendant has not responded to the Motion.

II. Findings and Conclusions

Based on Defendant's failure to make payments as required by the Court-approved Stipulation, Plaintiff is entitled to entry of the Stipulated Judgment. Judgment shall be in the amount of \$14,176.62 (calculated as the \$15,576.62 provided in the Stipulated Judgment, less \$1,400.00 in payments previously made by the Defendant). Plaintiff shall submit a conforming judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hector Guerrero

Represented By
Sam Benevento
M Jonathan Hayes

Defendant(s):

Hector Guerrero

Represented By
M Jonathan Hayes

Plaintiff(s):

NuVision Federal Credit Union

Represented By
Alana B Anaya

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:14-31356 Assi Super Inc

Chapter 7

Adv#: 2:16-01377 Avery v. JK Capital Partners, Inc.

#11.00 Hearing
RE: [37] Motion for Default Judgment

Docket 37

***** VACATED *** REASON: DISMISSED 4-4-17**

Tentative Ruling:

This hearing is vacated and no appearances are required. The Court has entered the order approving the stipulation to set aside the Defendant's default and to dismiss this action. The May 9, 2017 status conference is taken off calendar.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

Defendant(s):

JK Capital Partners, Inc.

Pro Se

Plaintiff(s):

Wesley Avery

Represented By
Christopher R Nelson

Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:15-17143 Kneon Inc.

Chapter 7

#12.00 Other: FRANCHISE TAX BOARD.

Hearing re [34] and [35] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 14.

Party Information

Debtor(s):

Kneon Inc.

Represented By
Nicholas M Wajda

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:15-17143 Kneon Inc.

Chapter 7

#13.00 APPLICANT: Accountant for Trustee Fees: KARL T ANDERSON, CPA INC.

Hearing re [34] and [35] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/4/2017:

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,682.00

Expenses: \$297.12

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Kneon Inc.

Represented By
Nicholas M Wajda

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:15-17143 Kneon Inc.

Chapter 7

#14.00 APPLICANT: Trustee: ROSENDO GONZALEZ

Hearing re [34] and [35] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/4/2017

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,750.00

Total Expenses: \$341.69

Other Expenses (Franchise Tax Board): \$800.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Kneon Inc.

Represented By
Nicholas M Wajda

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:16-18203 Southland Solutions LLC

Chapter 7

#15.00 Show Cause Hearing re [55] Order Requiring Ray Bazafkan And Southland Solutions, LLC To Appear And Show Cause Why They Should Not Be Held In Contempt Of This Court's Order Directing Them Pay \$1,773.00 In Costs

Docket 0

Tentative Ruling:

4/4/2017

Based on the Debtor and Bazafkan's failure to comply with the Sanctions Order, the Court will enter judgment against the Debtor and Rey Bazafkan and in favor of Summit, in the amount of \$3,273.00.

Pleadings Filed and Reviewed:

- 1) Order Requiring Ray Bazafkan and Southland Solutions, LLC to Appear and Show Cause Why They Should Not Be Held in Contempt of This Court's Order Directing Them to Pay \$1,773.00 in Costs ("OSC") [Doc. No. 55]
 - a) Notice of Motion and Motion for an Order to Show Cause Why Ray Bazafkan and Southland Solutions, LLC Should Not Be Held in Contempt of This Court's Order Directing Them to Pay \$1,773.00 in Costs ("Application for OSC") [Doc. No. 52]
 - b) Amended Proof of Service of Application for OSC [Doc. No. 53]
 - c) Proof of Service of OSC [Doc. No. 58]
- 2) No opposition on file

I. Facts and Summary of Pleadings

On November 30, 2016, the Court entered an order requiring Kevin Tang, counsel for Southland Solutions LLC (the "Debtor"), to pay \$4,290.87 in civil compensatory contempt sanctions to the County of Summit, Ohio ("Summit"). *See* Order Granting Creditor's Motion for Sanctions Against Debtor and Debtor's Counsel (the "Sanctions Order") [Doc. No. 46]. The Court declined to impose contempt sanctions against the Debtor or the Debtor's principal, Rey Bazafkan, as had been requested by Summit. However, the Court ordered the Debtor and Rey Bazafkan to pay Summit \$1,773.00,

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CONT... Southland Solutions LLC

Chapter 7

in accordance with an agreement that the parties reached prior to the hearing in partial resolution of Summit's motion for contempt sanctions. The Sanctions Order provided that Tang, Bazafkan, and the Debtor were required to make the payments to Summit within sixty days of the date of entry of the order.

Kevin Tang made the payments required by the Sanctions Order, but the Debtor and Rey Bazafkan did not. On March 10, 2017, the Court issued an order requiring Bazafkan and the Debtor to appear and show cause why they should not be held in contempt for failing to comply with the Sanctions Order. The OSC provided that the "possible sanctions are the amount owed under the original order of \$1,773.00 plus any penalties and interest, plus costs and attorneys' fees incurred by the County of Summit, Ohio, in bringing" the motion to enforce the Sanctions Order. [Note 1] Neither Bazafkan or the Debtor have responded to the OSC.

II. Findings and Conclusions

As a threshold matter, the Court notes that although this case has been dismissed, the Court retains ancillary jurisdiction to interpret and enforce the Sanctions Order. *See Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Ass'n, Inc.)*, 439 F.3d 545, 549 (9th Cir. 2006) (providing that a "federal court may retain ancillary jurisdiction over dismissed cases," if necessary "to enable [the] court to vindicate its authority and effectuate its decrees").

Turning to the merits, the Bankruptcy Court has authority to impose compensatory civil contempt sanctions pursuant to §105. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002). "The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191 (9th Cir. 2003). "The burden then shifts to the contemnors to demonstrate why they were unable to comply." *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999).

Here, Summit has established by clear and convincing evidence that the Debtor and Bazafkan violated a specific and definite order of the Court—namely, the Sanctions Order which required the Debtor and Bazafkan to pay \$1,773.00 in costs to Summit. Having failed to respond to the OSC, the Debtor and Bazafkan have not demonstrated that they were unable to comply with the Sanctions Order. Accordingly, the Court holds the Debtor and Bazafkan in civil contempt, and awards compensatory

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CONT... Southland Solutions LLC

Chapter 7

sanctions to Summit.

The Court will enter a judgment against the Debtor and Bazafkan, jointly and severally, and in favor of Summit, in the amount of \$3,273.00 (consisting of the \$1,773.00 that the Debtor and Bazafkan were required to pay pursuant to the Sanctions Order, plus \$1,500.00 in attorneys' fees incurred by Summit in bringing this motion to enforce the Sanctions Order). *See In re Count Liberty, LLC*, 370 B.R. 259, 274 (Bankr. C.D. Cal. 2007) (holding that civil compensatory contempt sanctions may include the attorneys' fees incurred in securing the contemnor's compliance with the order). If the judgment is not paid, Summit should enforce the judgment against the Debtor and Bazafkan in accordance with applicable law (as opposed to seeking additional contempt sanctions).

Summit shall submit a conforming judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

In its application for issuance of the OSC (the "Application for OSC"), Summit requested that Bazafkan be required to show cause why he should not be (1) incarcerated until he complies with the Sanctions Order and (2) subjected to a per diem fine until he complies with the Sanctions Order. The proposed OSC that Summit submitted to the Court did not contain language requiring Bazafkan to show cause why he should not be fined or incarcerated. Therefore, Summit is deemed to have abandoned its requests that Bazafkan be incarcerated or subjected to a per diem fine. Further, Bazafkan's failure to pay costs of \$1,773.00 is not the type of offense that warrants subjecting Bazafkan to the threat of incarceration or a per diem fine.

Party Information

Debtor(s):

Southland Solutions LLC

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... Southland Solutions LLC

Chapter 7

Kevin Tang

Trustee(s):

Richard K Diamond (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:16-21605 Mark C Cupp and Andrea J Cupp

Chapter 7

#16.00 Hearing re [17] United States Trustee's Motion to Dismiss Chapter 7 case Pursuant to 11 U.S.C. § 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to Extend Bar Date for Filing Complaint Under 11 U.S.C. § 727 Objecting to Debtor's Discharge

(transferred from Judge Donovan to Judge Robles)

fr. 12-14-16, 1-18-17

Docket 17

***** VACATED *** REASON: CONTINUED 5-3-17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark C Cupp

Represented By
Mark T Young

Joint Debtor(s):

Andrea J Cupp

Represented By
Mark T Young

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:15-17125 Desiree H Drury

Chapter 7

#17.00 Hearing re [7] U.S. Trustee's motion to dismiss case pursuant to 11 U.S.C. § 707(a) with a one-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a)

(transferred from Judge Donovan to Judge Robles)

fr. 3-8-17; 3-29-17

Docket 77

Tentative Ruling:

4/4/2017:

For the reasons set forth below, the United States Trustee's motion to dismiss the case with a one-year bar to refiling is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Dismiss Case Pursuant to 11 U.S.C. §707(a) with a One-Year Bar to Refiling Pursuant to 11 U.S.C. §§105(a) and 349(a) ("Motion") [Doc. No. 77]
 - a) Request for Judicial Notice Pursuant to F.R.E. 201 and F.R.B.P. 9017 in Support of Motion [Doc. No. 78]
 - b) Order (1) Continuing Hearing on United States Trustee's Motion to Dismiss from March 29, 2017 at 10:00 a.m. to April 5, 2017 at 10:00 a.m. and (2) Vacating Status Conference Set for March 29, 2017 at 10:00 a.m. [Doc. No. 85]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

Desiree H. Drury (the "Debtor") filed a voluntary Chapter 7 petition on May 4, 2015. The Hon. Thomas B. Donovan heard and determined all proceedings prior to March 13, 2017, after which the case was reassigned to the Hon. Ernest M. Robles.

On December 14, 2015, the Court granted the motion of the United States Trustee ("UST") to dismiss the case. Doc. No. 38. The Court found that the Debtor's case was abusive when applying the means test set forth in §707(b)(1) and (b)(2), was filed in

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CONT... Desiree H Drury

Chapter 7

bad faith under §707(b)(3)(A), and was abusive when considering the totality of the circumstances pursuant to §707(b)(3)(B). In making the means test determination, the Court found that the Debtor was not entitled to deduct expenses on account of payments for a vehicle, because title to the vehicle was not in the Debtor's name.

On August 23, 2016, the Bankruptcy Appellate Panel ("BAP") reversed the order of dismissal and remanded the case. The BAP found that for purposes of the means test calculation, the Debtor was entitled to deduct transportation expenses for the vehicle. The BAP reasoned that the vehicle expense was allowable because it was undisputed that if the Debtor did not continue making the payments, the vehicle would be repossessed. The BAP found that for purposes of the means test, the fact that the Debtor was not on title—and therefore not legally obligated to make the payments—was not relevant. After adjusting the means test calculation to include the Debtor's vehicle payment, the BAP found that the Debtor's case was not abusive under §707(b)(1) and (b)(2).

The BAP reversed the Court's determination that the petition was filed in bad faith under §707(b)(3)(A), finding that the Court had not made sufficient findings of fact to support its decision. For the same reason, the BAP reversed the Court's determination that the petition was abusive when considering the totality of the circumstances pursuant to §707(b)(3)(B).

On December 19, 2016, the UST filed a motion to compel discovery from the Debtor, based upon the Debtor's failure to respond to discovery served in connection with the UST's motion to dismiss. On January 17, 2017, the Court granted the motion to compel. The Court ordered the Debtor to produce documents responsive to the UST's written discovery by no later than January 27, 2017, and ordered the Debtor to appear for a Rule 2004 examination on February 9, 2017. *See* Order Granting Motion to Compel Discovery from the Debtor (the "Discovery Order") [Doc. No. 72].

The Debtor failed to produce the responsive documents as ordered, and failed to appear at the Rule 2004 examination. E-mail correspondence between the Debtor's counsel and the UST's office indicates that the Debtor's counsel has lost contact with the Debtor. The UST now moves to dismiss the case pursuant to §707(a), based upon the Debtor's failure to comply with the Discovery Order. The UST no longer seeks dismissal on the theories that the Debtor's petition is abusive under the means test or that the Debtor's petition is abusive when considering the totality of the circumstances. The UST seeks a one-year bar to refile, based on the fact that the Debtor has filed six bankruptcy petitions within the past five years.

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II. Findings and Conclusions

Section 707(a)(1) provides: “The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including unreasonable delay by the debtor that is prejudicial to creditors.”

Here, the Debtor has engaged in unreasonable delay by failing to produce documents and attend a Rule 2004 examination, despite having been ordered to do so by the Discovery Order. This conduct has prejudiced creditors by delaying the administration of the case, and by hindering the UST from fulfilling his statutory obligations with respect to the enforcement of the §707(b) means test. Aside from the delay it has caused, the Debtor’s failure to comply with the Court’s Discovery Order is itself further cause for dismissal.

Section 349(a) provides that “[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed.” As the Ninth Circuit has held:

The phrase “[u]nless the court, for cause, orders otherwise” in Section 349(a) authorizes the bankruptcy court to dismiss the case with prejudice. A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues.... [A] finding of bad faith based on egregious behavior can justify dismissal with prejudice.

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

Implicit in the authority to dismiss a case with prejudice is the power to impose a refiling bar that is not permanent. *Johnson v. Vetter (In re Johnson)*, No. ADV 12-1150, 2014 WL 2808977, at *7 (B.A.P. 9th Cir. June 6, 2014). When imposing a refiling bar, the Court must consider the following factors:

- 1) whether the debtor “misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner”;
- 2) “the debtor’s history of filings and dismissals”;
- 3) whether “the debtor only intended to defeat state court litigation”; and
- 4) whether egregious behavior is present.

Leavitt, 171 F.3d at 1224 (internal citations omitted).

Here, application of the *Leavitt* factors supports imposition of a one-year bar to refiling. As applied to this case, the second factor, the debtor’s history of filings and dismissals, is most relevant. The Debtor has filed six bankruptcy petitions within the past five years (not including the present petition), all of which were dismissed. Four

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of the cases were dismissed for failure to file schedules or other required documents; one case was dismissed for failure to appear at the meeting of creditors; and one case was dismissed as having been filed in bad faith, pursuant to §707(b)(3)(A). These past dismissals, as well as the Debtor's behavior in the present case, indicate that the Debtor has engaged, and continues to engage, in a pattern and practice of abusing the bankruptcy process. In the present case, the Debtor has abused the bankruptcy process by failing to comply with the Discovery Order and by ceasing all communication with her attorney. The Debtor's unwillingness to take the bankruptcy process seriously, as manifested by her failure to comply with her duties in both the present case and the past six cases that were dismissed, warrants dismissal with a one-year bar to refiling.

Based upon the foregoing, the case is dismissed pursuant to §707(a). The Court imposes a one-year bar to refiling pursuant to §349(a). The UST shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Desiree H Drury

Represented By
Stephen R Wade

Movant(s):

United States Trustee (LA)

Represented By
Melanie Scott
Nancy S Goldenberg
Russell Clementson
Kenneth G Lau

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Trustee(s):

David A Gill (TR)

Pro Se

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Adv#: 2:16-01152 MILLER v. Chung

#18.00 Plaintiff's Motion for Summary Judgment

(transferred from Judge Donovan to Judge Robles)

Docket 16

Tentative Ruling:

4/4/2017

The Court GRANTS the Trustee's Motion for Summary Judgment and finds that the Debtor is not entitled to a discharge pursuant to §727(a)(2)(B), (a)(3), (a)(4)(A), (a)(4)(D), and (a)(5).

Pleadings Filed and Reviewed:

- 1) Plaintiff's Notice of Motion and Motion for Summary Judgment ("Motion") [Doc. No. 16]
 - a) Declaration of Elissa D. Miller in Support of Motion for Summary Judgment ("Miller Decl.") [Doc. No. 17]
 - b) Declaration of Matthew A. Lesnick in Support of Motion for Summary Judgment ("Lesnick Decl.") [Doc. No. 18]
 - c) Proposed Statement of Uncontroverted Facts and Conclusions of Law in Support of Trustee's Motion for Summary Judgment ("SUF") [Doc. No. 21]
 - d) Proposed Judgment of Nondischargeability [Doc. No. 20]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

Sung Hyun Chung (the "Debtor") filed a voluntary Chapter 7 petition on February 9, 2015. The Hon. Thomas B. Donovan heard and determined all proceedings prior to March 13, 2017, after which the case was reassigned to the Hon. Ernest M. Robles.

On his schedules, the Debtor claimed that the value of his assets was only \$2,000. The Debtor failed to schedule a liquor license that the Trustee later discovered and sold for \$65,000, and also failed to schedule a 50% interest in Maxwell's Café in Culver City. On January 30, 2017, the Debtor testified that he and his business partner

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were marketing Maxwell's Café for sale for \$300,000. The Debtor has not filed amended schedules.

On July 14, 2015, the Trustee filed a motion to approve the sale of the liquor license. In response, the Debtor filed a motion to dismiss his bankruptcy petition. The Court denied the Debtor's motion to dismiss and granted the Trustee's motion to sell the liquor license.

On March 23, 2016, the Chapter 7 Trustee (the "Trustee") filed a complaint seeking to deny the Debtor's discharge pursuant to §727 (the "Complaint"). The Complaint alleges that the Debtor is not entitled to a discharge because he failed to schedule interests in various restaurants; failed to keep adequate books and records; and failed to satisfactorily explain the disposition of various restaurant assets.

The Trustee moves for summary judgment on the Complaint. The Debtor has not filed an opposition to the Motion.

II. Findings of Fact and Conclusions of Law

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

Findings of Fact [Note 1]

The Debtor failed to respond to the Requests for Admission that were served by the Trustee. Pursuant to Civil Rule 36(a)(3), the Requests for Admission are deemed

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admitted against the Debtor, and the following facts have been established:

- 1) As of February 6, 2015, Debtor owned an interest in the following restaurants:
 - a) Novel Café, located at 1101 Gayley Avenue in Los Angeles (the "Gayley Novel Café");
 - b) 13329 West Washington Boulevard in Los Angeles;
 - c) 1901 West Olympic Boulevard in Los Angeles;
 - d) Novel Café, Inc.;
 - e) Novel Café, LLC;
 - f) Novel Café Wilshire Inc. (the "Wilshire Novel Café");
 - g) Maxwell's Café LLC;
 - h) Maxwell's Café Inc.; and
 - i) Maxwell's Café of Venice.
- 2) The Debtor owned personal property in excess of \$2,000 as of the filing of the petition.
- 3) The Debtor does not have records of his income for the year preceding his bankruptcy petition.
- 4) The Debtor does not have records of the value of his assets as of February 6, 2015.

Having reviewed the evidence submitted by the Trustee in support of the Motion, and noting that none of the facts asserted by the Trustee have been controverted by the Debtor, the Court finds that there is no genuine dispute as to the following material facts:

The Debtor's Failure to Disclose Assets

- 1) The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, together with his Bankruptcy Schedules and Statement of Financial Affairs (collectively, "Schedules") on February 9, 2015 (the "Petition Date"), commencing this bankruptcy case. The Debtor signed the Petition under penalty of perjury, representing that the information he provided on the Petition was true and correct.
- 2) On his Schedules, the Debtor stated that he had no real property assets, \$2,000 in personal property assets, and \$215,071.00 in liabilities. The scheduled personal property assets consisted of \$1,000 worth of clothing, \$500 in cash, and "miscellaneous personal items" in the amount of \$500.
- 3) The Debtor never amended Schedule A or B. The only amendment was to add

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an additional unsecured claim to Schedule F in the amount of \$468,796.39.

- 4) On March 8, 2015, the Debtor appeared for his first meeting of creditors pursuant to §341(a). The Debtor testified that his Petition and Schedules were true and accurate. The Debtor stated that he had not filed tax returns since 2012.
- 5) At the March 8, 2015 meeting of creditors, after being questioned by the Trustee and creditors, the Debtor admitted that he had additional assets that were not listed on his Schedules. He admitted that he was a shareholder of a restaurant called Novel Café located at 3760 Wilshire Boulevard in Santa Monica (the "Wilshire Novel Café"). The Debtor also admitted that he had a liquor license for a restaurant and bar named SPOT. The Debtor stated that he was the sole owner of SPOT and that the restaurant closed six months earlier. The Debtor also stated that he owned 10% of a second Novel Café located at 1101 Galey Avenue in Westwood (the "Galey Novel Café"). The Debtor also stated that he had owned 50% of a restaurant called Maxwell's but that he sold it 4 or 5 years earlier for \$250,000.
- 6) The Trustee put the SPOT liquor license on the market and on July 14, 2015, the Trustee filed a motion to approve the sale of the SPOT liquor license to a third party for \$70,000. In response, the Debtor filed an opposition to the Trustee's sale motion, and filed a motion to dismiss his bankruptcy case. In the motion to dismiss, the Debtor stated he needed to "take a step back to reevaluate the financial circumstances that he found himself in[.]" The Debtor further stated that he owned some unspecified portion of Maxwell's Washington Blvd, LLC which owns and operates a restaurant called Maxwell's Café.
- 7) The Trustee and another creditor (the Heron Family Trust) opposed the motion to dismiss on the grounds that, if the case were dismissed, the Debtor could sell the liquor license and retain the proceeds himself.
- 8) On September 24, 2015, the Court approved the sale of the liquor license for \$65,000. The liquor license was subsequently sold for \$65,000. On November 12, 2015, the Court denied the motion to dismiss the bankruptcy case.
- 9) On December 8, 2015, a continued meeting of creditors took place. Upon further questioning, the Debtor testified that he still owned a 50% interest in Maxwell's Café. The Debtor admitted that Maxwell's Café was being marketed for sale for \$300,000. The Debtor testified that he no longer owned any interest in the Galey Novel Café or the Wilshire Novel Café.

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- 10) The Debtor stated that he had sold his interest in the Galey Novel Café seven years earlier, and that a corporation owned his interest in the Wilshire Novel Café. The Debtor claimed that he was promised an interest in the Wilshire Novel Café but that the owners decided not to give him anything because the restaurant was not performing well.

The Debtor's Failure to Provide Financial Information to the Trustee

- 11) The Trustee's efforts to obtain financial information commenced at the initial meeting of creditors in March 2015. The Debtor agreed to provide information and produce documents relating to his financial affairs.
- 12) The Trustee's counsel communicated with the Debtor's counsel on a number of occasions in 2015 seeking documents and information concerning the Debtor's financial affairs, but did not receive the financial information promised.
- 13) The Trustee filed the Complaint on March 23, 2016. The Trustee served Requests for Production of Documents on November 1, 2016, and Requests for Admission on November 8, 2016. The Debtor never served written responses to these requests.
- 14) After the Debtor failed to respond to the discovery, the Trustee's counsel reached out on a number of occasions trying to secure responsive documents. After several deadlines passed, the Debtor produced about two-thirds of a banker's box of documents on January 5, 2017, with such files predominantly relating to the initial formation and governance of the restaurants in which the Debtor held an ownership interest. The documents included articles of organization, operating agreements, lease agreements, and some applications for licenses to sell alcohol.
- 15) On January 12, 2017, the Trustee's counsel sent a meet and confer letter inquiring about the balance of the requests, which sought information such as documents relating to the Debtor's income and wages, bank accounts, and tax return information.
- 16) In response, the Debtor produced bank account statements for July 2014 to September 2016 and tax returns for 2013 through 2015.
- 17) The Debtor failed to produce documents relating to the financial performance of any of the restaurants or sufficient documentation evidencing the transfer of his interests in the restaurants.

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The Debtor's Inconsistent Testimony Regarding His Ownership of the Galey Novel Café

- 18) The Debtor has given inconsistent testimony about his ownership of the Galey Novel Café. At the meeting of credits on March 8, 2015, the Debtor testified that he owned 10% of the Galey Novel Café. At the second meeting of creditors on December 8, 2015, the Debtor testified that he did not own an interest in the Galey Novel Café. At his deposition, the Debtor testified that he had given his interest in the Galey Novel Café to his girlfriend for free in 2011.

The Debtor's Failure to Satisfactorily Account for the Pre-petition Disposition of Assets

- 19) The Debtor testified at the initial meeting of creditors on March 8, 2015 that he owned shares in Wilshire Novel Café. Documents produced by the Debtor show that the Debtor possessed 2,450 shares in the Wilshire Novel Café Wilshire as of February 25, 2013. However, at the second meeting of creditors on December 8, 2015, the Debtor stated that he did not own an interest in the Wilshire Novel Café. At his deposition, the Debtor testified that he gave the Wilshire Novel Café to a friend for free in 2011. The Debtor failed to produce adequate documentation regarding the transfer of his interest in the Wilshire Novel Café.
- 20) The Debtor testified that he gave his 68% interest in the King of New York Pizzeria to a friend for free in 2012. Debtor failed to produce adequate documentation regarding the transfer of his interest in the King of New York Pizzeria.
- 21) The Debtor testified that he formed the Ocean Park Novel Café, LLC in 2007 or 2008 and owned 100% of it, but gave it to his ex-wife in 2010. The Debtor failed to produce adequate documentation regarding the transfer of his interest in the Ocean Park Novel Café.
- 22) The Debtor testified that he opened a Novel Café located on Main Street in Santa Monica (the "Santa Monica Novel Café") in 2008 or 2009 and owned 100% of it, but gave it to his sister for nothing in approximately 2011. The Debtor failed to produce adequate documentation regarding the transfer of his interest in the Santa Monica Novel Café.
- 23) The Debtor testified that he bought 100% of the Lazy Daisy restaurant between 2008 and 2001 and sold it to his sister in 2012 or 2013 for \$250,000

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or \$300,000. Debtor failed to produce adequate documentation regarding the transfer of the Lazy Daisy restaurant.

Conclusions of Law

Based upon the foregoing findings of fact, the Court makes the following conclusions of law.

The Debtor is Not Entitled to a Discharge Pursuant to §727(a)(2)(B)

Section 727(a)(2) provides that a debtor is not entitled to a discharge if:

the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

- (A) property of the debtor, within one year before the date of the filing of the petition; or
- (B) property of the estate, after the date of the filing of the petition.

Here, the Debtor possessed valuable assets as of the date of the petition that he failed to schedule. In particular, the Debtor concealed his interest in the SPOT liquor license. After discovering the SPOT liquor license, the Trustee sold it for \$65,000. The Debtor also concealed his 50% interest in the company that operates Maxwell's Café. The Debtor's interest in Maxwell's Café is also valuable, as evidenced by the fact that Maxwell's Café is being marketed for \$300,000. The Debtor also concealed his interests in the Galey Novel Café and Wilshire Novel Café.

The Debtor's interests in the SPOT liquor license, Maxwell's Café, the Galey Novel Café, and the Wilshire Novel Café constituted property of the estate that the Debtor was obligated to disclose to the Trustee. "[T]he debtor has a duty to prepare schedules carefully, completely, and accurately." *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001). By failing to schedule his interests in these assets, the Debtor concealed property of the estate from the Trustee in violation of §727(a)(2)(B). The Debtor is not entitled to a discharge pursuant to §727(a)(2)(B).

The Trustee has not established that the Debtor transferred or concealed property within one year prior to the filing of the petition. Therefore, the Court cannot find that the Debtor is not entitled to a discharge pursuant to §727(a)(2)(A).

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The Debtor is Not Entitled to a Discharge Pursuant to §727(a)(3)

Section 727(a)(3) provides that a debtor is not entitled to a discharge if:

the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case.

Here, the Debtor failed to preserve financial information regarding the performance of the various restaurants in which the Debtor holds or has held an interest. The Debtor failed to preserve information regarding the alleged pre-petition transfer of his interests in the Wilshire Novel Café, King of New York Pizzeria, Ocean Park Novel Café, Santa Monica Novel Café, and Lazy Daisy restaurant. The Debtor's financial condition and business transactions could have been ascertained had the Debtor fulfilled his obligation to preserve these business records. The Debtor is not entitled to a discharge pursuant to §727(a)(3).

The Debtor is Not Entitled to a Discharge Pursuant to §727(a)(4)

Section 727(a)(4) provides that a debtor is not entitled to a discharge if:

the debtor knowingly and fraudulently, in or in connection with the case—
(A) made a false oath or account; [or] ...
(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.

Here, the Debtor submitted schedules, signed under penalty of perjury, stating that his estimated personal property assets were worth only \$2,000. The Trustee's investigation revealed that the Debtor owned a liquor license worth \$65,000, and had a 50% interest in Maxwell's Café. The Debtor's interest in Maxwell's Café has value, as evidenced by the fact that the Debtor and his business partner were marketing Maxwell's Café for sale for \$300,000 as of January 2017. The Debtor's failure to disclose such substantial assets could not have been the result of mere carelessness.

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The Court finds that by failing to disclose these assets, the Debtor knowingly and fraudulently made a false oath or account. The Debtor is not entitled to a discharge pursuant to §727(a)(4)(A).

The Debtor also withheld from the Trustee adequate information relating to his property and financial affairs, in violation of §727(a)(4)(D). Specifically, the Debtor withheld documentation regarding the alleged pre-petition transfer of his interests in the Wilshire Novel Café, King of New York Pizzeria, Ocean Park Novel Café, Santa Monica Novel Café, and Lazy Daisy restaurant. In addition, the Debtor withheld documents relating to the financial performance of all of the restaurants in which he holds or has held an interest. Consequently, the Debtor is not entitled to a discharge pursuant to §727(a)(4)(D).

The Debtor is Not Entitled to a Discharge Pursuant to §727(a)(5)

Section 727(a)(5) provides that a debtor is not entitled to a discharge if:

the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities.

Here, the Debtor has failed to produce adequate documentation regarding the alleged pre-petition transfer of his interests in the Wilshire Novel Café, King of New York Pizzeria, Ocean Park Novel Café, Santa Monica Novel Café, and Lazy Daisy restaurant. As a result, the Debtor is not entitled to a discharge pursuant to §727(a)(5).

Conclusion

Based upon the foregoing, the Court finds that the Debtor is not entitled to a discharge pursuant to §727(a)(2)(B), (a)(3), (a)(4)(A), (a)(4)(D), and (a)(5). The Court will enter the judgment that has already been submitted by the Trustee.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Notes

Note 1

To the extent any findings of fact should more properly be considered conclusions of law, they shall be deemed as such. To the extent any conclusions of law should more properly be considered findings of fact, they shall be deemed as such.

Note 2

Although the record is unclear, it appears that Maxwell's Café is being marketed without the Trustee's authorization.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Defendant(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Movant(s):

ELISSA D MILLER

Represented By
Matthew A Lesnick

Plaintiff(s):

ELISSA D MILLER

Represented By
Matthew A Lesnick

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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2:12-47115 Nuri March

Chapter 7

#19.00 APPLICANT: Attorney for Trustee: Brutzkus Gubner Rozansky Seror Weber LLP

Chapter 7 Trustee's Final Report, Application for Compensation and Application (s) for Compensation of Professionals filed on behalf of Trustee Alfred H. Siegel. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pg))

(transferred from Judge Donovan to Judge Robles)

Docket 95

Tentative Ruling:

4/4/2017

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$93,599.50

Expenses: \$2,496.62

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Nuri March

Represented By
Leon D Bayer

Trustee(s):

Alfred H Siegel (TR)

Represented By
Steven T Gubner
Talin Keshishian

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Nuri March

Travis M Daniels

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Chapter 7

#20.00 APPLICANT: ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

Chapter 7 Trustee's Final Report, Application for Compensation and Application (s) for Compensation of Professionals filed on behalf of Trustee Alfred H. Siegel. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pg))

(transferred from Judge Donovan to Judge Robles)

Docket 95

Tentative Ruling:

4/4/2017

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$25,250.00

Total Expenses: \$0

Other Charges (Bankruptcy Court): \$260.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Nuri March

Represented By
Leon D Bayer

Trustee(s):

Alfred H Siegel (TR)

Represented By

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Steven T Gubner
Talin Keshishian
Travis M Daniels

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#21.00 APPLICANT: Accountant for Trustee: Grobstein Teeple Financial Advisory

Chapter 7 Trustee's Final Report, Application for Compensation and Application (s) for Compensation of Professionals filed on behalf of Trustee Alfred H. Siegel. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pg))

(transferred from Judge Donovan to Judge Robles)

Docket 95

Tentative Ruling:

4/4/2017

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$1,677.00

Expenses: \$121.45

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Nuri March

Represented By
Leon D Bayer

Trustee(s):

Alfred H Siegel (TR)

Represented By
Steven T Gubner
Talin Keshishian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

CONT...

Nuri March

Travis M Daniels

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

10:00 AM

2:12-47115 Nuri March

Chapter 7

#22.00 APPLICANT: Charges: UNITED STATES BANKRUPTCY COURT

Chapter 7 Trustee's Final Report, Application for Compensation and Application (s) for Compensation of Professionals filed on behalf of Trustee Alfred H. Siegel. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pg))

(transferred from Judge Donovan to Judge Robles)

Docket 95

Tentative Ruling:

4/4/2017

Incorporated by reference at calendar number 20.

Party Information

Debtor(s):

Nuri March

Represented By
Leon D Bayer

Trustee(s):

Alfred H Siegel (TR)

Represented By
Steven T Gubner
Talin Keshishian
Travis M Daniels

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

11:00 AM

2:15-11540 Edward A Nassar

Chapter 7

#100.00 APPLICANT: Trustee Fees: BRAD D. KRASNOFF

Hearing re [117] and [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$22,238.53

Total Expenses: \$150.97

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Edward A Nassar

Represented By
Julie J Villalobos

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

11:00 AM

2:15-11540 Edward A Nassar

Chapter 7

#101.00 APPLICANT: Accountant for Trustee Fees: Menchaca & Company LLP

Hearing re [117] and [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Having reviewed the application for fees and expenses filed by this Applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$3,856.00

Expenses: \$104.97

You may submit on this tentative without appearing in court. To do so, contact Daniel Koontz or Nathan Reinhardt at 213-894-1522.

Party Information

Debtor(s):

Edward A Nassar

Represented By
Julie J Villalobos

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

11:00 AM

2:15-11540 Edward A Nassar

Chapter 7

#102.00 APPLICANT: Attorney for Trustee Fees: DANNING GILL DIAMOND & KOLLITZ

Hearing re [117] and [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/4/2017

Having reviewed the second and final application for fees and expenses filed by this Applicant, the court approves the application and awards the fees and expenses set forth below. Prior approved interim fee applications by this Applicant are now deemed FINAL.

Fees: \$133,761.00 (\$124,596.00 already distributed)

Expenses: \$4,252.76 (\$3,960.67 already distributed)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Edward A Nassar

Represented By
Julie J Villalobos

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

11:00 AM

2:15-21624 Harry Roussos

Chapter 7

#103.00 HearingRE: [748] Motion Chapter 7 Trustee's Motion for Order Authorizing Continued Operation of Debtors' Business; Memorandum of Points and Authorities; Declaration of Howard M. Ehrenberg in Support Thereof (Lev, Daniel)

Docket 748

Tentative Ruling:

4/4/2017

For the reasons set forth below, the Trustee's motion to continue operating the Properties is GRANTED.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order Authorizing Continued Operation of Debtors' Businesses ("Motion") [Doc. No. 748]
 - a) Notice of Chapter 7 Trustee's Motion for Order Authorizing Continued Operation of Debtors' Businesses [Doc. No. 749]
- 2) No opposition on file

I. Facts and Summary of Pleadings

On October 7, 2016, the Court entered stipulated judgments (the "Property Judgments") providing, among other things, that properties located at 2727-2741 Abbot Kinney Boulevard, Venice, CA (the "Abbot Kinney Property") and 153 San Vicente Boulevard, Santa Monica, CA (the "San Vicente Property") (collectively, the "Properties") are properties of the jointly-administered bankruptcy estates of Harry and Theodosios Roussos (the "Roussos Brothers"). The Property Judgments were entered in connection with the Court's approval of a Settlement Agreement between the Trustee and Defendants O.F. Enterprises, LP, Liro, Inc., S.M.B. Investors Associates, LP, SMB Management, Inc., Lula Michaelides, Harry Roussos, and Christine Roussos (collectively, the "Settling Defendants"). *See* Order Approving Settlement Agreement ("Settlement Approval Order") [Doc. No. 591].

The Settlement Agreement provides that the Roussos Brothers' estates will receive the amount of \$11 million, to be paid from the proceeds of the Trustee's sale of the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

11:00 AM

CONT... Harry Roussos

Chapter 7

San Vicente Property and, if necessary, the sale of the Abbot Kinney Property. The Settlement Agreement provides that the Trustee will operate the Properties during the marketing period.

On December 20, 2016, the Court entered an order authorizing the Trustee to operate the Properties during the 180-day period between October 6, 2016 and April 4, 2017. Doc. No. 668. The Trustee now seeks authorization to continue operating the Properties for a further 180 days, pending the sale of the Properties. No opposition to the Motion has been filed.

II. Findings and Conclusions

The Motion is GRANTED, and the Trustee is authorized to continue operating the Properties, effective as of April 4, 2017. Section 721 provides: "The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interests of the estate and consistent with the orderly liquidation of the estate." Here, the Trustee's continued operation of the Properties is in the best interests of the estate. If the Properties were not operated during the marketing period, they would fall into disrepair and would not command as high a sales price. The Trustee's operation is consistent with the orderly liquidation of the estate since the Trustee will be operating the Properties only until they can be marketed and sold.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Harry Roussos

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 05, 2017

Hearing Room 1568

11:00 AM

CONT... Harry Roussos

Chapter 7

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami